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Supreme Court of the United States

OCTOBER TERM, 1959

No. 517

QUALITY COAL CORPORATION, an Indiana Corporation,
Petitioner,

v.

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, as Trustees of the United Mine Workers of America Welfare and Retirement Fund,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF RESPONDENTS IN OPPOSITION

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BRIEF OF RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The District Court[1] rendered no opinion; its Order and Judgment appear in the Record[2] at pp. 240-1.

[1] United States District Court for the Southern District of Indiana (Terre Haute Division) is referred to as "District Court" or "trial court".

[2] In the petition (abbreviated herein as "P.") filed by Quality Coal Corporation it is stated that the record consists of the "Appendix of Record accompanying and printed together with petitioner's original brief filed in the Court of Appeals" (P. 2). References in this Brief in Opposition are likewise made to said Appendix indicated as "R.". Also filed in this Court is "Appellees' Brief and Appendix" in the Court of Appeals.

The opinion of the Court of Appeals for the Seventh Circuit[3] is reported at 270 F. 2d 140; it appears also as Appendix I in the petition, p. 19; and the dissenting opinion appears as Appendix I-A in the petition, p. 26.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Where Trustees of an irrevocable trust created by and continued under national collective bargaining agreements entered into by sundry coal operators and a labor organization pursuant to Section 302 (c)(5) of the Labor-Management Relations Act, 1947, institute an action against one of the operators signatory thereto to recover moneys due to the trust based upon the operator's covenant to pay into the trust a stipulated sum on each ton of coal produced for use or for sale, following the operator's production of 210,440.99 tons of coal under the Agreements, and the operator has otherwise recognized the Agreements, does the Agreements' provision, contained in a single sentence, which is separate and distinct from provisions relating to the trust, that as a condition of employment, all employees covered thereby shall be or become members of the union "to the extent and in the manner permitted by law" so violate Section 8 (a)(3) of said Act as to foreclose recovery by the Trustees?

2. Whether threats of a strike to obtain a coal operator's execution of collective bargaining agreements constitute duress so as to render the Agreements void and unenforceable; and even if so, is such defense available where admittedly employees produced

[3] Herein called either "Seventh Circuit" or "Court of Appeals"

210,440.99 tons for the operator under said agreements, the operator had recognized such agreements in other respects, and the operator had not rescinded the agreements within a reasonable time following their execution?

3. Was the operator's obligation, as set forth in Question 1, to pay into the Fund the stipulated sum following production of 240,440.99 tons of coal obviated under the defense that the Agreements lacked mutuality of obligation because they imposed no obligations upon Trustees?

4. Where the trust instrument of said collective bargaining agreements provides that "Title to all moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund, is the union signatory to such agreements an indispensable party in an action by Trustees to recover of and from a signatory operator moneys due and owing to it by such operator?

5. Where a welfare and retirement fund is created by a collective bargaining agreement and under trust provisions therein a signatory coal operator-settlor obligates itself to pay into such fund a stipulated sum for each ton of coal produced by it for use or for sale and title to all moneys paid into or due and owing the fund are vested in the fund's trustees, does a trust arise upon the production of coal by the operator-settlor, even though it has not transferred to the fund moneys due and owing it?

STATUTES INVOLVED

The pertinent statutory provisions involved are contained in Sections 7, 8 and 302 of the Labor-Management Relations Act, 1947 (herein called "Act") [29 U.S.C.A. 157, 158 and 186] and are set forth as Appendix I of this brief, p. 31 *et seq.*

STATEMENT OF THE CASE

1. Pleadings, Trial Proceedings and the Seventh Circuit's Judgment

Under the terms of a trust instrument contained in the National Bituminous Coal Wage Agreement of 1950[4] and carried forward in two collective bargaining agreements[5] admittedly executed (R. 48-9, 54-5) by Quality Coal Corporation[6] and the United Mine Workers of America,[7] Quality obligated itself to pay into the United Mine Workers of America Welfare and Retirement Fund[8] forty cents for each ton of coal it produced for use or for sale and agreed in such instrument that:

> "Title to all moneys paid into *and or due and owing said Fund* shall be vested in and remain exclusively in the Trustees of the Fund . . . ."[9]

Quality admitted that it produced 210,440.99 tons[10] between October 1, 1955 and November 30, 1957. It recognized the Agreements during all times material herein by checking off union dues of its employees and

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[4] Herein called the "1950 Agreement" (Trustees Exhibit C; R. 59-61).

[5] The two Agreements involved are: (1) The National Bituminous Coal Wage Agreement of 1950 as Amended *Effective September 1, 1955*, [herein called the "1955 Agreement"], and (2) said Agreement of 1950 as Amended *Effective October 1, 1956* [herein called the "1956 Agreement"]. (Trustees' Ex. A and B; R. 57-8) All emphases herein are supplied; unless otherwise indicated.

[6] Herein called "Quality" or "defendant-settlor".

[7] Herein called "UMW".

[8] Herein called "Fund".

[9] The pertinent provisions of the Trust Instrument are set forth herein in Appendix II, pp. 35-37. See also R. 60. All emphases herein are supplied.

[10] R. 49, 51, 55.

remitting them to UMW.[11] The Fund's Trustees,[12] by complaint sought a money judgment in its favor against Quality based upon such production. In its Answer (R. 40-7) Quality asserted its non-liability based upon defenses which are hereinafter discussed. Trustees (R. 56) and Quality (R. 99)[13] each filed a motion for summary judgment and affidavits and exhibits in support of their respective motions and in opposition to each other's motions.

The trial court, noting Trustees' statement (R. 240-1) "that all facts well pleaded in the answer . . . and contained in the affidavits attached to defendant's motion for summary judgment and in opposition to plaintiffs' motion for summary judgment, be accepted as true for the purposes of plaintiffs' motion for summary judgment", found that "there is no genuine issue of fact to be submitted to the trial court as to plaintiffs' motion for summary judgment", sustained Trustees' summary judgment motion and ordered that Trustees recover of Quality $84,176.40, with interest and costs[14] (R. 241).

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[11] See Quality's answer to Interrogatory No. 12 in "Appellees' Brief and Appendix," p. 44, in the Seventh Circuit and now on file in this Court.

[12] The Fund's Trustees are John L. Lewis, Henry G. Schmidt and Josephine Roche (R. 2, 50, 62). The complaint and amended complaint (herein called "complaint") appears in the Record, pp. 2, 50.

[13] Quality's motion, styled "Motion To Dismiss And For Judgment On The Pleadings" was treated as a summary judgment motion (R. 205).

[14] Finding further that "a question of fact is raised by defendant's motion for summary judgment" and that "defendant is not entitled to judgment as a matter of law" the trial court denied defendant's [Quality's] motion for summary judgment (R. 241).

The Seventh Circuit, on August 18, 1959, affirmed the District Court's judgment[15] and denied Petitioner's rehearing petition (P. 30-1). Quality has filed a petition for a writ of certiorari to the Seventh Circuit's judgment; and the instant brief is filed in opposition to this Court's granting thereof.

2. The Facts:[16] Quality's Defenses; and the Seventh Circuit's Conclusions

Because factual recitals in the Petition are both incomplete and inaccurate, Trustees deem it essential that there be a re-statement of the facts.

The Fund, an irrevocable trust, was created by a trust instrument contained in[17] the 1950 Agreement,

[15] As noted, one Judge dissented upon the *sole* ground that the Agreements did not accord with Section 8(a)(3) of the Act.

[16] The facts, as recorded, result from Quality's admissions in its answer and from affidavits filed both by Trustees and Quality.

In support of their motion for summary judgment, Trustees filed the 1950, 1955 and 1956 Agreements and the affidavit of Trustee Roche (Trustees' Exhibits A, B, C and E; R. 57-62).

Quality then filed its summary judgment motion with supporting affidavits [Quality Exhibits A through F (R. 100-7)]. *Quality's affidavits did not purport to contradict any factual recital contained in the affidavits supporting Trustees' motion.* Instead, they were offered by Quality solely in support of its legal defenses of duress and of compulsory union membership allegedly invalidating the Agreements and in opposition to Trustees' motion.

Trustees then filed additional affidavits [Trustees' Exhibits G, H-1, H-2 and I (R. 159-164)]. Quality, in turn, filed rebuttal affidavits [Quality Exhibits G, H, I and J (R. 193-8)].

Contrary to petitioner's assertion that such facts are "admitted and undisputed" (P. 7), the record establishes that, as the District Court's Order and Judgment declared (R. 240-1), Trustees accepted as true "all facts well pleaded in the answer to the complaint and contained in the affidavits attached to defendant's motion for summary judgment" (R. 240-1) *but for the limited purposes* "of plaintiffs' motion for summary judgment" (R. 241).

[17] Contractual provisions which are pertinent to the issues herein are to be found in Appendix II to this brief, p. 34 *et seq.*

(Trustee Ex. C; R. 59) Quality admits it is a signatory to the 1955 and 1956 Agreements which carried forward the trust instrument provisions of the 1950 Agreement (R. 57-8) and obligated Quality to pay into the Fund forty cents[18] per ton on each ton of coal produced by it for use or for sale. The Seventh Circuit found (P. 21; 270 F. 2d 141) that Quality admitted it produced 210,440.99 tons and that plaintiffs in the District Court sued as Trustees of the Fund.

As the Seventh Circuit indicated, Quality denied "the validity of the agreement as being contrary to law" and contended, "on several grounds, that, as a matter of law, the judgment below should be reversed" (P. 21; 270 F. 2d 141-2). The Seventh Circuit rejected each of Quality's asserted defenses, discussion of which follows.

In its petition for certiorari, petitioner urges that the Agreements were illegal "by virtue of petitioner being forced to operate a closed shop" (P. 6) because they contain the provision that (R. 59-60):

> "It is further agreed that as a condition of employment all employees shall be or become members of the United Mine Workers of America, *to the extent and in the manner permitted by law* . . .".

In affidavits filed to oppose Trustees' summary judgment motion, Quality's President Kumpf averred that the United Mine Workers' Constitution provides that members shall refuse to work with non-union workers, while Kumpf and three members of Local Union 7365, UMW, also in affidavits, recite the rule in the Local and "District 8" to be that a new employee is required

[18] An amendment to the 1950 Agreement in 1952 increased the tonnage payment to forty cents (40¢) per ton. See "Appellees' Brief and Appendix", p. 46; also *post*, p. 39.

to sign a membership card and check-off authorization "on the morning of the th. d day or the third start" and failure so to do would require the union members to refuse to work with the non-union worker.[19]

Rejecting Quality's contention that the Agreements' union security provisions violated Section 8(a)(3), the Seventh Circuit concluded "that the union membership provision in question does not violate" said section (P. 24; 270 F. 2d 143). It reasoned that the qualifying phrase "to the extent and in the manner permitted by law", contrary to the dissenting opinion (P. 26; 270 F. 2d 144), did not consist of "vague words" but, to the contrary, was "clear and unequivocal" (P. 24; 270 F. 2d 143) and that "the meaning and intent of the contractual provision involved is fully expressed in one sentence" (P. 23; 270 F. 2d 142). It reasoned that (P. 23; 270 F. 2d 142-3):

> "No general requirement is imposed, limitations on which must be searched for in some other separate provision or clause of the contract. The qualified condition imposed is expressed as one complete provision. Its application is not to be measured by some standard found elsewhere in the contract".

It declared further that the Agreements' validity "is not affected by any conduct or practice of the parties which would constitute an unfair labor practice under" Section 8(a)(3) [P. 24; 270 F. 2d 143]. At most, it stated, "such conduct or practice, *not authorized by the agreement itself*, would show that the Union and Quality violated applicable law" but that "It would not alter or change the terms of the agreement" (P. 24; 270 F. 2d 143).

The Seventh Circuit found no merit in Quality's claim (P. 13) of the Agreements' invalidity because

[19] Quality Exhibits A (R. 100), C (R. 101-5), D, E and F (R. 105-7)

of duress. Noting judicial recognition that the right to engage in a lawful strike is a protected concerted activity, the Seventh Circuit declared that the "threat to cause a legal strike and its attendant work stoppage does not of itself constitute duress" and that "mere inequality in economic bargaining power is not legal unfairness which will permit either party to avoid a contract" (P. 24-5; 270 F. 2d 143).

It rejected Quality's contention (P. 14) that the Agreements were unenforceable because of lack of mutuality since such contention "lacks substance" (P. 25; 270 F. 2d 143).

The Seventh Circuit (P. 25; 270 F. 2d 143), rejecting Quality's argument (P. 14) that indispensable parties are lacking, declared that such position "is fully answered by our decision in *Lewis* v. *Quality Coal Corp.*, 243 F. 2d 769, 770, 772", citing this Court's cases of *United States* v. *Carter*, 353 U.S. 210, 220, and *United States* v. *Embassy Restaurant*, 359 U.S. 29, 3 L. Ed. 601.

To Quality's position (P. 15) that no trust was created and that therefore Trustees could not bring the action because no money had ever been transferred or delivered to the Fund, the Seventh Circuit pointed to the Agreements' language that:

> "Title to all moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund. . . ."

and held that thereunder "a trust was created, the corpus of which was any money transferred or delivered by Quality to the trustees for the purposes of the Agreement or which Quality became obligated to transfer to the trustees for that purpose" and, finalizing, the Court of Appeals declared, "We hold that a trust was created" (P. 21; 270 F. 2d 142).

ARGUMENT

A. There Is Neither Conflict of Decision Nor An Important Question of Federal Law

There is no "irreconcilable conflict" of federal courts of appeals' decisions to warrant the Court's granting the writ herein. No contrariety of opinion exists in the various decisions which have considered the precise language which the Seventh Circuit has stamped as valid under the Act's Section 8(a)(3). Its views accord with those expressed in *Lewis* v. *Fentress Coal and Coke Co., Inc.*, 1958, D.C., M.D. Tenn., 160 F. Supp. 221, affirmed by the Sixth Circuit (264 F.2d 134); *Lewis* v. *Hixson Coal Co.*, 1959, D.C., W.D. Ark., 174 F. Supp. 241; and *Lewis* v. *Kerns*, 1959, D.C., S.D. Ind., 175 F. Supp. 115. No court, construing the Agreements' wording, has condemned it as being in violation of Section 8(a)(3). Moreover, it is wholly consonant with this Court's pronouncements in *NLRB* v. *Rockaway News Supply Co.*, 345 U.S. 71.

Other federal courts have condemned, as violative of the statute noted above, union security clauses *differing entirely from the clause in the instant Agreement*. The Seventh Circuit herein, and the Sixth Circuit in *Fentress*, distinguished Second Circuit cases upon which Quality relies, the reasoning of one of which dissenting Judge Schnackenberg accepted, *although the contractual language was grossly dissimilar from that which the instant case presents.* In each of those and other cases upon which Quality relies the union-security provisions themselves were *per se* violative of Section 8(a)(3) and the legal principle therein enunciated was correlated to and based upon such language. Where, as herein, the union-security provisions, on their face, show an intent to have a clause lawful under the statute by use of the phrase "to the extent and in the manner permitted by law",

the legal principle has no application. Even Quality admits to this Court (P. 6) that the conflict "appears to be one of fact". Further, Quality demonstrates how barren is its argument of invalidity and conflict by its admission (P. 10) of judicial requirement that statutory requisites be read into every collective bargaining agreement.

Except as to the issue of the validity of the union security provisions, neither Quality nor the dissenting opinion contends that the Seventh Circuit's opinion is in anywise at variance with decisions of other federal appellate courts or that any other issue raises an important question of federal law.

Quality has singled out the issue of the validity of the union security provisions as the basis for the award of certiorari; but in view of the factual distinctions herein discussed and the lack of conflicting decisions, no important question of federal law is posed. This is particularly emphasized where, as here, the Court of Appeals' decision on the issue of the validity of the union security provisions, as well as other issues determined by it, is clearly correct. This is fully demonstrated in the discussion which follows:

B. The Agreements Are Not Violative of the Act's Section 8(a)(3). The Seventh Circuit Is Clearly Correct in So Holding

The Seventh Circuit appropriately appraised the words "to the extent and in the manner permitted by law" as a qualifying phrase expressly modifying and limiting the application of the clause relating to union membership and professed that any requirement it imposed "is conditioned on conformity to existing or future law" (P. 22; 270 F. 2d 142). It cogently observed that the phrase "serves to restrict and modify the words of the same sentence in which it is employed

and relates to that subject matter alone" (P. 23; 270 F. 2d 142) and that "the meaning and intent of the contractual provision involved is fully expressed in one sentence" and that "No general requirement is imposed, limitations on which must be searched for in some other separate provision or clause of the contract . . . . Its application is not to be measured by some standard found elsewhere in the contract" (P. 23; 270 F. 2d 142-3).

Disagreeing with the dissenting opinion which characterizes the qualifying phrase as "a group of vague words" (P. 26; 270 F. 2d 144), the Seventh Circuit, consonant with the District Court in *Lewis* v. *Fentress Coal and Coke Company, Inc.*, 1958, D.C., M.D. Tenn., 160 F. Supp. 221, 228, appraised the phrase as "clear and unequivocal" (P. 23; 270 F. 2d 143). The Sixth Circuit, in a Per Curiam opinion in *Fentress Coal & Coke Co., Inc.* v. *Lewis*, 6 Cir., 264 F. 2d 134, "affirmed upon the grounds and for the reasons stated in the opinion of the District Court".[20]

In clear, positive and unequivocal language the Agreements' signatories have denoted their intention to achieve a clause lawful under the Act. The qualifying phrase—as the Seventh Circuit has characterized the words "to the extent and in the manner permitted by law"—could not reasonably be interpreted to connote illegality. To urge upon this Court, as the dissenting opinion and Quality do, that the language is offensive to the Act's Section 8(a)(3) is to trans-

[20] Only a reading of Fentress (160 F. Supp. 211 and 264 F. 2d 134) is required to show how inaccurate and contrary to fact is Quality's argument (P. 11) that *Fentress* "involved none of the questions . . . decided by the majority opinion"; that it decided "matters completely outside . . . issues involved" herein "and completely ignored the undisputed facts in the record"; that Fentress "was made on the proposition . . . there was no" alteration or change in the contract "and brushed off the important matter as to whether or not there was a violation of a closed shop"

mute an expressed intention to do that which is lawful into that which the law *does not* permit. Such a result may be achieved, Trustees submit, only by unreasonable and fatuous reasoning. The interpretative process so used would be at odds with the principle which denounces the right of tribunals to ignore plainly expressed provisions of a contract. *Colgate-Palmolive-Peet Co.* v. *NLRB*, 338 U.S. 355, 363. Rejecting the thesis urged by Quality herein, closed-shop requirements under a union's general laws were recently held not to render the contract illegal *per se* where it expressly read that such union laws "not in conflict with federal . . . law" should govern the parties' contractual relations, the appellate court declaring, "*An erroneous impression of plain terms does not change the meaning of the plain terms.*" Honolulu Star-Bulletin, Ltd. v. NLRB, DC Cir., F. 2d , decided November 25, 1959 (unreported). Further challenge to the dissent is found in the principle that written instruments, even those lending themselves to two constructions, are to be construed as lawful wherever possible. *Graf Northern R. Co.* v. *Delmar Co.*, 283 U.S. 686, 691; *E. I. DuPont De-Nemours & Co.* v. *Claiborne-Reno Co.*, 8 Cir., 64 F. 2d 224, cert. den. 290 U.S. 646; *Eddy* v. *Prudence Bonds Corp.*, 2 Cir., 165 F. 2d 157.[3]

This Court has heretofore swept aside contentions such as Quality and the dissenting jurist would impose upon the language under consideration. In a situation where a collective bargaining agreement expressly stated the parties' belief that "this contract now contains no provision which is contrary to federal or state law or regulation" and the National Labor Relations

[3] The National Labor Relations Board, in construing collective bargaining agreements, has recognized and implemented the legal doctrine thus expressed. *Whatever Mfg. Co.*, 109 NLRB 1125, 1127

Board had held it void upon the theory that it contained an illegal union-security clause, this Court, in *NLRB* v. *Rockaway News Supply Co.*, 345 U.S. 71, 78, declared:

> "The whole contract shows respect for the law and not defiance of it. The parties, who could not foresee how some of the provisions of the statute would be interpreted, proposed to go as far toward union security as they are allowed to go, and this is their right; and they proposed to go no farther, and that is their whole duty."

Certainly here the Agreements' language shows "respect for the law and not defiance of it" and that the signatories intended "to go as far toward union security as they are allowed to go" and that "they proposed to go no farther".[22]

The Third Circuit, in *NLRB* v. *United Electrical, Radio etc. Workers of America*, 3 Cir., 203 F. 2d 673, 676, construing union-security provisions of a collective bargaining agreement, held that statutory requirements of Section 8(a)(3) "must . . . be read into every such agreement" although they "*need not necessarily be expressly included* on pain of invalidating the union security provision", citing this Court's *Rockaway* case. *Even Quality admits (P. 10) the necessity for reading the law's requirements into the Agreements.* Its ad-

[22] In the *Fontress* case, the District Court, rejecting the claim that the agreement's wording was condemned under Section 8(a)(3), declared that such argument "cannot be accepted in view of the" language "to the extent and in the manner provided by law" and found the problem "to be fully answered, at least in principle" by *Rockaway* (160 F. Supp. 228).

While the dissenting jurist in the instant case regards the *Rockaway* case as "unjustifiably relied on by plaintiffs" (P. 27; 270 F. 2d 144), he does not point to the quotation contained above in the text but says that the "agreement . . . lacks a separability clause such as appeared in the contract in the Rockaway case".

mission dissipates totally its argument that the Agreements' wording is at war with the Act.

Like Quality, the dissenting opinion urges the Agreements' invalidity because, as it asserts, "in the operation under the agreement at Quality's mines a closed shop has been rigorously maintained" (P. 26; 270 F. 2d 144).

A ready answer is found in *Lewis* v. *Fentress Coal & Coke Company* case (160 F. Supp. 227). There the defendant operator argued that "the practice should be looked to as indicating the practical construction of the contract by the parties as requiring a union shop" and the district court observed that that allegation "must be accepted as true for the purpose of disposing of the defendant's contention. But, declared the court,

> "it does not follow that the plaintiffs' motion for summary judgment should be overruled or that a material issue of fact is presented. This is true because *at most the practice, not authorized by the contract itself, would show that the union and the company violated the applicable law. It would not alter or change the terms of the Agreement which . . . provides in effect that neither a closed shop nor a union shop is required by the contract unless it is in conformity with the law . . .*" (160 F. Supp. 227).

The district court refused to regard "the practice as in any wise relevant in determining" the parties' intention as to the contract's meaning because "the contract itself is not ambiguous" (160 F. Supp. 227). Agreeing with the *Fentress* reasoning, the Seventh Circuit's majority declared that:

> "The validity of the agreement is not affected by any conduct or practice of the parties which would constitute an unfair labor practice"

under Section 8(a)(3), but that

> "At most, such conduct or practice, not authorized by the agreement itself, would show that the Union and Quality violated applicable law. It would not alter or change the terms of the agreement." (P. 24; 270 F. 2d 143).

Such reasoning likewise disposes of the dissenting jurist's complaint that the majority opinion partially repeals the Act (P. 27-28) and Quality's argument (P. 10-11) that it nullifies the Act's Section 7, as well as provisions of Section 8.

Cases Relied Upon by Quality and Those Cited in the Dissenting Opinion Are Readily Distinguishable.

Challenging Quality's statement (P. 6) that the instant case "raises important questions of Federal Law wherein various Circuit Courts of Appeal are in irreconcilable conflict with one another", the Seventh Circuit, noting cases from the Second Circuit upon which Quality relies, registered its agreement with the Sixth Circuit's *Fentress* that "cases such as *N.L.R.B.* v. *Gottfried Baking Co.*, 2 Cir., 210 F. 2d 772; *N.L.R.B.* v. *Gaynor News Co.*, 2 Cir., 197 F. 2d 719 and *Red Star Express Lines of Auburn* v. *N.L.R.B.*, 2 Cir., 196 F. 2d 78 *are distinguishable*" (270 F. 2d 143). As noted, condemned clauses differ materially from the Agreements' wording; and Quality admits (P. 6) the conflict "appears to be one of fact".

In *Gottfried* (210 F. 2d 772), the Second Circuit concern was with a preferential hiring clause requiring Gottfried "to hire only members of the Union . . . in good standing". A *separate* paragraph of the contract stated that if "the closed shop is in conflict with the law", then the union shop should prevail, it being the parties' intention "to grant the maximum union

security permitted by law" (p. 777). The National Labor Relations Board (103 NLRB 227, 228, fn. 6) had found that the "savings clause" was "*too lacking in specificity* to prevent the execution or retention of the preferential hiring provisions from constituting an unfair labor practice" (210 F. 2d 780), with which the Second Circuit agreed.

In *Red Star* (196 F. 2d 78), the employer agreed in 1944 to "hire only union men if available but if . . . not available", non-union men could be employed "upon the condition that they become members of the union within twenty-four hours after employment" (p. 80). Renewals continued such agreement until enactment of the Taft Hartley Act, when an addendum to the contract provided that "all clauses that are affected by the law shall be considered null and void" but if "such clauses are declared legal" they "become part of" the Agreement (p. 80). The Second Circuit agreed with the Board that the addendum failed "to specify which, *if any*, clauses were to be suspended" and reasoned that "the parties themselves were unable to determine which parts of the contract were affected by the . . . Act" (p. 81).[22a]

[22a] The District of Columbia Circuit, in the *Honolulu Star-Bulletin* case, uses the following language to distinguish *Red Star* and other cases:

> "We find no merit in the Board's contention that Section 24(c) of this contract is merely a savings clause of the type found ineffectual in Red Star Exp. Lines v. N.L.R.B., 196 F. 2d 78 (2d Cir. 1952), and other cases cited to us. *In Red Star the savings clause was held insufficient to remove the coercive effect upon employees of an explicit (illegal) union-security clause.* The present contract contained no such explicit provision, and Section 24(c) was not a suspension of the operation of any illegal clause but rather an incorporation of certain general laws."

In *Gaynor* (197 F. 2d 719), the contract contained a union security clause. No Board-conducted union shop election had authorized such clause, as the Act then required. The contract provided in another provision that "should . . . any provision . . . be in conflict with federal or state law or regulation then such provision shall continue in effect only to the extent permitted". Agreeing with the Board, the Second Circuit opined that the savings clause "was not to defer the application of the union-security provision but only to postpone 'the issue of its legality for future determination by some proper tribunal'." (p. 723).

The Seventh Circuit, differentiating *Gottfried, Red Star* and *Gaynor* from the instant case, appropriately said (P. 24; 270 F. 2d 143):

> "In the instant case validity of the union membership provision is not dependent upon some vague or indefinite savings clause. *Its validity is assured and protected by the very language in which the condition of union membership is stated.* This is not the case of a provision illegal by its terms which must be sustained, if at all, by resort to some independent general savings clause. *It is a case where the provision is qualified by its own terms so that it meets the test of legality.*"

This distinction is likewise applicable to Quality's citation (P. 9) of *N.L.R.B.* v. *E. F. Shuck Construction Co.*, 9 Cir., 243 F. 2d 519. Therein, a savings clause provided that any provision "*'held'* to be invalid under the Act should be deemed inoperative". The Ninth Circuit rejected argument that this language removed the union security provisions' violating Section 8(a)(3) because use of the word "*'held'* indicates that an invalid provision is operative . . . until it is held invalid by the Board or by a court" and further: "the provision is fatally vague because it does not state which provisions are suspended" (p. 521).

The dissenting jurist agreed with the reasoning in *Gottfried* (270 F. 2d 145), the inapplicability of which has already been noted. Quality (P. 12) and the dissent point to *N.L.R.B.* v. *Broderick Wood Products Co.*, 10 Cir., 261 F. 2d 548, 557. In that case, respondents *tacitly admitted* that a preferential hiring clause was "an illegal provision within . . . Section 158(a)(3)", and the defense asserted was that it was not intended that such provisions be a part of the Agreement—a defense which the Ninth Circuit rejected. The inappositeness of *Broderick* is readily apparent.

Quality's additional citations (P. 8-9) of *N.L.R.B.* v. *Local 743, United Brotherhood C. & J.*, 9 Cir., 202 F. 2d 516, 518; and *N.L.R.B.* v. *McGraw & Co.*, 6 Cir., 206 F. 2d 635, 639, are totally dissimilar to the language found in the instant Agreements. In the Ninth Circuit's *Local 743* case, the condemned Agreement required the company to hire only employees belonging to the union or referred by it; while in the Sixth Circuit's *McGraw*,[23] the employer agreed to employ through the union office only members in good standing. Neither of such cases contained any savings or qualifying clauses.

In none of these cases could it have been argued, as Trustees tenably urge herein, that the contract signatories by the contract's language "show respect for the law and not defiance of it" and that thereby they intended "to go as far toward union security as they are allowed to go" and they "proposed to go no farther".

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[23] Even the Sixth Circuit's *McGraw* case militates against assertions in Judge Schnackenberg's dissent and of Quality that the Agreements are "unenforcible" (P. 27) and that the union-security provisions "destroy the entire Agreement" (P. 12). While the Sixth Circuit restrained recognition of the clause which violated Sec. 8(a)(3), no injunction was entered against enforcement of all other provisions of the agreement (206 F. 2d 642).

Decisions of the National Labor Relations Board Demonstrate the Validity of the Language Under Construction.

In *Wagner Iron Works*, 104 NLRB 445 (1953), union membership was contractually required as a condition of continued employment but there was dissipated "any doubt as to the validity of the clause" because of the contract's further containment that membership should be maintained *"to the extent authorized by Section 8(a)(3)"* (104 NLRB 489). Also, the Board held a clause that "This contract is subject in all respects to the provisions of the Labor-Management Relations Act, as it may be amended from time to time, there being no intent in this contract to limit or abridge in any manner the rights and privileges extended by said Act", met the Act's requirements. *America Seating Company*, 98 NLRB 800. See also *Owens-Illinois Glass Company*, 96 NLRB 640.

Both the dissenting opinion (P. 27) and Quality (P. 12) argue that the union security provisions' illegality renders the Agreements "wholly unenforcible". Even if there were merit to such position—which Trustees deny—this Court's *Rockaway* fully dissipates that position. This Court made it plain that Quality's obligation in the instant case would exist by its statement (345 U.S. 76-77, 79):

> ". . . even if inclusion of a forbidden provision is enough to justify the Board in setting it aside as to the future, it does not follow that it can be wholly ignored in judging events that occurred before it was set aside. It is one thing for the Board to say that the parties should not go on under such a contract; it is another to say that no effect whatever may be given to a contract negotiated in good faith by the union and the employer which both believed to be valid and operative, to which both were conforming their conduct, and which no authority had yet held void.
>
> . . .
>
> "The total obliteration of this contract is not in obedience to any command of the statute . . ."

The foregoing discussion abundantly demonstrates that the Seventh Circuit was clearly correct in holding that the union membership provision "does not violate" Section 8(a)(3).

C. The Seventh Circuit Correctly Found Quality's Claim of the Agreements' Invalidity Because of Duress to Be Without Merit

Quality's contention that the Agreements were void because of duress (P. 13-14) was denied by the Seventh Circuit, which found "no merit" therein (P. 24-5; 270 F. 2d 143). Quality's claim is based upon Carl Kumpf's statement that he executed both the 1955 and 1956 Agreement "against his free will and against the free will of the corporation" and that if Quality had refused to sign the Agreements union members working for it would be compelled to stop work under penalty of fine and suspension from the union (R. 101-2).

Trustees submit there was no duress in the Agreements' execution; but even if there had been, Quality subsequently ratified the Agreements and is estopped to deny their validity.

Threats of a Strike to Obtain a Collective Bargaining Agreement Do Not Constitute Duress.

Attainment of a legitimate purpose for which a labor union exists is legal justification for interference with an employer's business. Corbin on Contracts (1951), Vol. 6, Section 1470, p. 857. That a "strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital"[24] is settled law. Decisional law in Indiana, like federal statutory and de-

[24] *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 209.

cisional law,[26] sanctions lawful strike activity.[27] The Seventh Circuit noted (P. 24; 270 F. 2d 143) its previous recognition "that the right to engage in a lawful strike is a protected concerted activity", citing *American Brake Shoe Co.* v. *N.L.R.B.*, 7 Cir., 244 F. 2d 489. It aptly stated (P. 24; 270 F. 2d 143) that "The threat to cause a legal strike and its attendant work stoppage does not of itself constitute duress".[28]

Appropriately the Seventh Circuit declared that there was "no merit" in Quality's claim of invalidity of the Agreements because of duress[29] (P. 25; 270 F. 2d 143).

Even a Contract Made Under Duress Is Not Void But Only Voidable and May Be Affirmed by the One Against Whom the Duress Was Allegedly Practiced.

In Indiana a contract made under duress is not void but only voidable and may be ratified and affirmed

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[26] Labor Management Relations Act, 1947, Section 7 [29 U.S.C.A. 157]; *International Union of United Automobile etc. Workers of America* v. *O'Brien*, 339 U. S. 454, 456-7.

[27] *Roth* v. *Local Union No. 1460 of Retail Clerks Union*, 216 Ind. 363, 367-8, 24 N. E. 2d 280, 282.

[28] In *Shipley* v. *Pittsburgh etc. R. R. Co.*, 1949, DC, W.D. Pa., 83 F. Supp. 722, 762-3, the Court said:

"*The threat to cause a legal strike is not duress.*"

See also *United States Rubber Co.* v. *Moon*, 93 Ind. App. 571, 179 N. E. 26, 28, wherein the Indiana court notes that the term "duress" is connotative of conduct "contrary to law".

[29] In its Petition (p. 13), Quality complains of the Seventh Circuit's citation of *Birmingham* v. *Bartels*, 8 Cir., 157 F. 2d 295, directing this Court's attention to the quotation therefrom that duress or fraud had not been "set up" or "attempted to be proved" therein. Trustees submit that this does not in any wise dissipate the soundness of the Seventh Circuit's declaration that:

> "The threat to cause a legal strike and its attendant work stoppage does not of itself constitute duress. And mere inequality in economic bargaining power is not legal unfairness which will permit either party to avoid a contract." (P. 25-5; 270 F. 2d 143).

by the party upon whom the duress was practiced (*Schee* v. *McQuilken*, 59 Ind. 269, 278; *Rose* v. *Owen*, 42 Ind. App. 137, 142, 85 N. E. 129). Such authorities likewise require that election to rescind such a contract be made within a reasonable time.

Quality ratified the Agreements; it failed to rescind them within a reasonable time; it admitted it operated under the Agreements for more than two years, producing 210,440.99 tons of coal; and it checked off union dues and remitted the same to UMW pursuant to the Agreements (ante, pp. 4-5). As the Indiana court stated in *United Rubber Co.* v. *Moon*, 93 Ind. App. 571, 578, 179 N.E. 26, 29:

> "The payments made on the note, of which there were five, *could indicate nothing but ratification* . . ."

Quality Is Estopped to Assert the Agreements' Invalidity on the Grounds of Duress.

Quality willingly accepted the benefits of its employees' coal production. Since Fund benefits are payable only to employees of contributing employers,[29a] Quality's contention, if sustained, would result in its employees being rendered ineligible for benefits, contrary to all concepts of equity and good conscience. Quality's pattern of asserted duress based upon fear of strikes was rejected in *Lewis* v. *Cable*, 1952, D.C., W.D. Pa., 107 F. Supp. 196, 197-8, where it is stated:

> "*Defendant cannot by his acts and declarations pretend to be bound by the Agreement so as to prevent strikes . . . and then, when full liability under said Agreement is asserted, seek to disaffirm it.*"[30]

[29a] See the Act's Section 302 (29 U.S.C.A. 186) which appears in Appendix I hereto, pp. 32-3.

[30] Applicable here is the maxim, *Allegans contraria non est audiendus*. A court has said:

> "And a thousand years before Justinian the attitude of primitive people towards duplicity is well illustrated by the fable

See also *Lewis* v. *Mearns*, 1958, DC, N.D. W. Va., 168 F. Supp. 134, 139, aff'd *Mearns* v. *Lewis*, 4 Cir., 268 F. 2d 427; *Harrison* v. *Glucose Sugar Refining Co.*, 7 Cir., 116 F. 304, 307-8 (1902).

D. The Seventh Circuit Is Clearly Correct in Rejecting Quality's Contention That the Agreements Are Unenforceable Because of a Lack of Mutuality

Quality urges (P. 14) that the Agreements are unenforceable because they lack mutuality of obligation, arguing that no obligation is placed upon Trustees, non-signatories to the Agreements. Such contention, stated the Seventh Circuit, "lacks substance" (P. 25; 270 F. 2d 143). The correctness of the Seventh Circuit's holding is readily apparent.

It is too late in the history of collective bargaining in this country to treat seriously an employer's challenge to the validity of a collective bargaining agreement on the ground of lack of mutuality of obligation. Federal policy, mirrored by numerous federal statutes and federal decisional law, seeking the removal of industrial strife and the encouragement of collective bargaining, militates against the proposal which Quality now urges upon the Court. Collective bargaining agreements, implementing as they do a national labor policy, have long been accorded a secure and stable position in the national economy. Cf. *Gatliff Coal Co.* v. *Cox*, 6 Cir., 152 F. 2d, 52, 54; Corbin on Contracts (1951), Vol. 6, Section 1420, p. 691. Quality overlooks that its obligations thereunder arose only upon employee performance. *Assn. of Westinghouse*

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of Aesop where the satyr said to the traveller: 'Be off with you! I will have no part with a man who can blow hot (to warm his hands) and cold (to cool his pottage) from the same mouth.'" *Keller* v. *Norfolk & Western Ry. Co.*, 113 W. Va. 286, 292, 167 S. E. 448.

Salaried Employees v. *Westinghouse Elec. Corp.*, 348 U.S. 437, 440. What has been said herein (*ante*, pp. 23-24) about Quality's unconscionable attitude in attempting to avoid the Agreements for reasons of alleged invalidity due to alleged duress is likewise applicable.

Davis v. *Davis*, 197 Ind. 386, 151 N.E. 134, cited by Quality on this issue (P. 14), is without precedent value. In that case it was "not alleged nor . . . claimed that plaintiff did any work or performed any service for defendant on any of the . . . days in question" (151 N. E. 136). In the instant case, Quality's admission of coal production fully sustains the fact that its employees performed services. In 49 Am. Jur., Specific Performance, Section 34, p. 46, it is said, "At law, . . . mutuality of obligation in the sense that there must be an undertaking on one side and a consideration on the other is all that is essential." Certainly, the instant situation meets that test.

E. This Court's Decisions Fully Sustain the Seventh Circuit's Conclusion That UMW Is Not an Indispensable Party in the Instant Case

In the Seventh Circuit, as in its Petition (p. 15), Quality urges UMW to be an indispensable party.[30a]

The Seventh Circuit rejected Quality's contention, declaring it

[30a] Whereas it argues to this Court that UMW as a contract signatory alone could declare, at its option, a violation of the Agreement, which they exercised (P. 15), Quality complained to the Seventh Circuit that "Conditions precedent were not complied with" in that Trustees failed "to allege that" UMW "have exercised their option to deem the alleged failure of payment to the" Fund "a violation of the Agreement" and it argued that, absent UMW's declaration of contract violation, Trustees can enjoy no greater rights than the employees have insisted upon for themselves. See Quality's brief (pp. 32-33) in the Seventh Circuit which is now filed with this Court. Applicable again is the maxim, *Allegans contraria non est audiendus.*

> "is fully answered by our decision in Lewis v. Quality Coal Corp., 7 Cir., 243 F. 2d 769, 770, 772, cf. United States for Benefit and on Behalf of Sherman v. Carter, 353 U. S. 210, 220, 77 S. Ct. 793, 1 L. Ed. 2d 776; United States v. Embassy Restaurant, [359 U.S. 29, 3 L. Ed. 601]." (P.25; 270, F. 2d 144).

That the Seventh Circuit's conclusion is correct is manifest by the following discussion:

Trustees sue to recover royalty on coal produced by defendant-settlor. Quality was one of the settlors of the trust. In the trust instrument, defendant-settlor gave plaintiffs-Trustees a right to collect a royalty of forty cents (40¢) per ton on each ton of coal produced for use or for sale by defendant-settlor, *and vested exclusive title to that right in Trustees.*

There is both legislative support and judicial recognition that in enacting Section 302(c)(5) [29 U.S.C.A. 186(c)(5)] Congress sought to create welfare trust funds which would be free and clear from union control. This legislative support is referred to and quoted in *United Marine Division* v. *Essex Transportation Co.*, 3 Cir., 216 F. 2d 410, 411-12 (1954): Congress made of the Fund an entity separate and apart from either the employer-settlors or the contracting union.

Significantly, every decision in which the instant issue has been decided has been consonant with this Court's profession in the *Carter* case wherein it is said (353 U.S. 220):

> "The master labor agreements not only created Carter's obligation to make the specified contributions, but simultaneously *created the right of the trustees to collect those contributions on behalf of the employees. The trust agreement gave the trustees the exclusive right to enforce payment.*"

and with this Court's declaration in *Embassy* (3 L. Ed. 2d 604) that the

> "obligation is to contribute sums to the trustees, . . . ; it is enforceable only by the trustees who enjoy not only the sole title, but the exclusive management of the funds."

Cf. *United Marine Division* v. *Essex Transportation Co.*, 3 Cir., 216 F. 2d 410, 412 (1954); *Application of Townsend*, 130 N.Y.S. 2d 327, 329. Significantly, Quality directs the Court to no cases[31] which mandate that UMW, as representative of its membership, is an indispensable party in an action brought by Trustees to recover rights under the trust instrument. On the other hand, federal decisions pose the question as to whether UMW is a proper party in such an action.[32]

[31] Quality's citation of and quotation from *Lewis* v. *Benedict Coal Co.*, 6 Cir., 259 F. 2d 346, 354, (P. 15) are totally abortive. That case (No. 18, October Term, 1959), now before this Court for decision, involves the issue of a counter action against UMW by the coal company. There is no question therein of UMW as an indispensable party.

[32] Quality complains (P. 14) of the majority opinion's declaration that the instant issue was answered in the first *Quality* case (243 F. 2d 770, 772). Quality, in the Seventh Circuit, asserted, as it does now, that the issue was not raised in the *first Quality* case. To such assertion Trustees pointed out to the Seventh Circuit that "a comparision of the brief in the first *Quality* case filed . . . on Quality's behalf with its brief filed herein discloses that Quality's counsel hav lifted verbatim several pages of the first brief and incorporated them in their brief in the current case". See Appellees' Brief and Appendix, p. 33, which was filed by Petitioner with this Court. No dispute thereof was made in the Seventh Circuit by Quality.

Further, Quality complains of the necessity of UMW as a party litigant "so that if there were any defenses by reason of illegal strikes, etc., they could have been raised as was done in the Benedict case herein cited" (P. 15). A short and ready answer to such argument is that no such defense was raised or counter suit filed, as was done in the *Benedict* case, and it may be assumed that had there been such defenses diligent counsel for Quality would have raised them.

Assn. of Westinghouse Salaried Employees v. *Westinghouse Elec. Corp.*, 348 U.S. 437; *International Ladies' Garment workers Union, AFL* v. *Jay-Ann Co., Inc.*, 5 Cir., 228 F. 2d 632 (1956); *United Steelworkers of America* v. *Pullman-Standard Car Mfg. Co.*, 3 Cir., 241 F. 2d 547 (1957).

F. The Seventh Circuit's Holding That a Trust Was Created Is Clearly Correct

In the Seventh Circuit, and in its Petition (pp. 15-16), Quality urged that "there must be delivery of the corpus or there can be no trust". The Seventh Circuit, referring to the Agreements' language that

> "Title to all moneys paid into *and or due and owing said Fund* shall be vested in and remain exclusively in the Trustees of the Fund . . .",

held that

> "*Under this language a trust was created, the corpus of which* was any money transferred or delivered by Quality to the trustees for the purposes of the agreement or which *Quality became obligated to transfer to the trustees* for that purpose" (P. 21; 270 F. 2d 142).

Trustees submit that the Seventh Circuit's conclusion of this issue wholly accords with applicable principles.

Under basic trust law, a valid existing trust must be based upon an existing property interest; but, if a trust is based upon an expectancy, it is created and may be enforceable upon the happening of the future event. Enforceability of such a trust is based upon a valid contract, supported by valuable consideration, providing for the creation of a trust. Consistent authorities establish the view that the obligation to create a future trust and to transfer the trust res to the

trust is contractual, and is enforceable upon the happening of a future event upon which the transfer of the trust res is dependent. Federal courts,[33] the Indiana court,[34] and leading text authorities alike sustain the rule's validity.[35]

Under the trust instrument's language which vested in the Trustees the title to all moneys "paid into *and or due and owing said Fund*", when Quality produced coal for use or for sale, the future and perhaps uncertain expectancy at the time of the trust instrument's execution became a reality. Quality's obligation to pay Trustees the royalty not only became due and owing, but title to that obligation vested in the Trustees. An executory trust supported by valuable consideration becomes enforceable when the trust res is acquired by the settlor; and this is particularly true here where Quality, as settlor, by contract passed title to the trust obligation to Trustees whenever royalty payments, the trust obligation, became due and owing.

Quality's contention (P. 16) that the Seventh Circuit's holding directly conflicts with Indiana law, citing *Kraus* v. *Kraus*, 235 Ind. 325, 132 N.E. 2d 608, 610, is unsound. Contrariwise, *Kraus* recognizes the validity of an agreement to make a gift in future if supported by valuable consideration.

[33] *Merritt Oil Corp.* v. *Young*, 10 Cir., 43 F. 2d 27, 29-30. *Universal Insurance Co.* v. *Steinbach*, 9 Cir., 170 F. 2d 303, 305.

[34] *Ramsdell* v. *Moore*, 153 Ind. 393, 53 N. E. 767.

[35] Restatement of the Law of Trusts (1935), Vol. I, Section 86(b), p. 345; Bogert, Trusts and Trustees (1951), Vol. I, Section 112, p. 507; Scott on Trusts, 2d Ed. (1956), Vol. I, Section 86, pp. 649-50.

CONCLUSION

For the foregoing reasons it is submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX I

Labor Management Relations Act, 1947

Section 7 [29 USCA 157]

"*Right of employees as to organization, collective bargaining, etc.*

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

Section 8 [29 USCA 158]

"*Unfair labor practices*

"(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an

employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159 (f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159 (e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: . . .

". . .

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: . . .

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against any employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

". . ."

Section 302 [29 U.S.C.A. 186]:

"(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money

or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

"(c) The provisions of this section shall not be applicable . . . (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office

of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities."

* * * * * * * * *

APPENDIX II

169 **Trustees' Exhibit C**

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950

Effective March 5, 1950, to June 30, 1952

Executed at Washington, D. C., March 5, 1950

THIS AGREEMENT, made this 5th day of March, 1950, by and between the coal operators and associations signatory hereto hereinafter referred to as Operators, parties of the first part, and the International Union, United Mine Workers of America, hereinafter referred to as Mine Workers, on behalf of each member thereof, party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements previous agreements as herein provided.

* * *

WITNESSETH: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as defined and set forth in this Agreement. It is agreed that the United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the employees of the parties of the first part. It is further agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America, to the extent and in the manner permitted by law, except in those exempted classifications of employment as hereinafter provided in this agreement. This provision does not change the rules or practices of the industry pertaining to management. The Mine Workers intend no intrusion upon the rights of management as heretofore practiced and understood. It is the intent and purpose of the parties

hereto that this agreement will promote and improve industrial and economic relationship in the bituminous coal industry and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement.

MINE SAFETY PROGRAM

* * *

WORKMEN'S COMPENSATION AND OCCUPATIONAL DISEASES

* * *

170 UNITED MINE WORKERS OF AMERICA

WELFARE AND RETIREMENT FUND OF 1950

A. It is hereby stipulated and agreed by the contracting parties hereto that there is hereby created a Fund to be designated and known as the "United Mine Workers of America Welfare and Retirement Fund of 1950." During the life of this Agreement, there shall be paid into such Fund by each operator signatory hereto the sum of thirty cents (30¢) per ton of two thousand (2,000) pounds on each ton of coal produced for use or for sale.

* * *

171 It is agreed that this Fund is an irrevocable trust created pursuant to Section 302 (c) of the "Labor-Management Relations Act, 1947," and shall endure as long as the purposes for its creation shall exist. Said purposes shall be to make payments from principal or income or both, of (1) benefits to employees of said Operators, their families and dependents for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance or accident insurance; (2) benefits with respect to wage loss not otherwise compensated for at all or adequately by tax supported agencies created by federal or State law; (3) benefits on account of sickness, temporary disability,

permanent disability, death or retirement; (4) benefits for any and all other purposes which may be specified, provided for or permitted in Section 302 (c) of the "Labor-Management Relations Act, 1947," as agreed upon from time to time by the Trustees including the making of any or all of the foregoing benefits applicable to the individual members of the United Mine Workers of America and their families and dependents, and to employees of the Operators other than those exempted from this Agreement; and (5) benefits for all other related welfare purposes as may be determined by the Trustees within the scope of the provisions of the aforesaid "Labor-Management Relations Act, 1947." Subject to the stated purposes of this Fund, the Trustees shall have full authority, within the terms and provisions of the "Labor-Management Relations Act, 1947," and other applicable law, with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds, and all other related matters.

The aforesaid Trustees shall designate a portion (which may be changed from time to time) of the payments herein provided, based upon proper actuarial computations, as a separate fund to be administered by the said Trustees herein described and to be used for providing for pensions or annuities for the members of the United Mine Workers of America or their families or dependents and such other persons as may be properly included as beneficiaries thereunder.

* * *

Title to all the moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust

* * *

* * *

The obligation to make payments to the "United Mine Workers of America Welfare and Retirement Fund of

1950" under this contract shall become effective on March 6, 1950, and the first actual payments are to be made on April 10, 1950, and thereafter continuously on the 10th day of each succeeding calendar month covering the production of all coal for use or sale during the preceding month.

• • •

Failure of any Operator signatory hereto to make full and prompt payments to the "United Mine Workers of America Welfare and Retirement Fund of 1950" in the manner and on the dates herein provided shall, at the option of the United Mine Workers of America, be deemed a violation of this Agreement. This obligation of each Operator signatory hereto, which is several and not joint, to so pay such sums shall be a direct and continuing obligation of said Operator during the life of this Agreement and it shall be deemed a violation of this Agreement if any mine to which this Agreement is applicable shall be sold, leased, sub-leased, assigned, or otherwise disposed of for the purpose of avoiding the obligation hereunder.

• • •

WAGES AND HOURS

• • •

VACATION PAYMENT

• • •

CHECKOFF

• • •

DISTRICT AGREEMENTS

• • •

SETTLEMENT OF LOCAL AND DISTRICT DISPUTES

• • •

HOUSE COAL

• • •

MISCELLANEOUS

• • •

TERMINATION OF AGREEMENT

• • •

NATIONAL CONFERENCES

• • •

INTEGRATED INSTRUMENT

This Agreement is an integrated instrument and its respective provisions are interdependent and shall be effective from and after March 5, 1950.

172 IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this agreement to be signed by its proper officers or representatives at Washington, D. C., on this the 5th day of March, A. D., 1950.

District 8
UNITED MINE WORKERS OF AMERICA
March 15, 1950
JOHN L. LEWIS

OPERATORS -
Quality Coal Corporation
111 S. Forrest Ave.
Brazil, Indiana.
CARL F. KUMPF, *President*

• • •

175 **Trustees' Exhibit**

NATIONAL BITUMINOUS COAL WAGE
AGREEMENT OF 1950 AS AMENDED
SEPTEMBER 29, 1952

EFFECTIVE OCTOBER 1, 1952

• • •

NOW, THEREFORE, THIS AGREEMENT made this 29th day of September, 1952, by and between the coal operators, associations, companies and individuals signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends,

modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950" and all previous agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

* * *

UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950

Amend the first printed paragraph of subsection A by striking out of line four thereof the words and figures "thirty cents (30¢)" and inserting in lieu thereof the words and figures "forty cents (40¢)".

* * *

165 **Trustees' Exhibit A**

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED EFFECTIVE SEPTEMBER 1, 1955

* * *

NOW, THEREFORE, THIS AGREEMENT, effective September 1, 1955, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other and additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided, such amend-

ments, modifications and supplements being as follows, to wit:

WAGES AND HOURS

* * *

166 VACATION PAYMENT

* * *

TERMINATION OF AGREEMENT

* * *

167 **Trustees' Exhibit B**

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED EFFECTIVE OCTOBER 1, 1956

* * *

NOW, THEREFORE, THIS AGREEMENT effective October 1, 1956, by and between the coal operators, association, companies and individuals signatory hereto and by and between such other and additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

WAGES AND HOURS

* * *

168 VACATION PAYMENT

* * *

TERMINATION OF AGREEMENT

* * *